

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT JOHN BRIA,)	1:05-CV-0376 AWI LJO HC
)	
Petitioner,)	
)	ORDER GRANTING PETITIONER'S
v.)	MOTION TO WITHDRAW PETITION AND
)	DENYING RESPONDENT'S MOTION TO
J. SOLIS, Warden,)	DISMISS AS MOOT
)	
Respondent.)	[Doc. #16 & #19]
)	

_____Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 9, 2005, Respondent filed a motion to dismiss the petition for failure to exhaust state remedies. On October 3, 2005, Petitioner filed a motion to withdraw the petition for writ of habeas corpus without prejudice. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, "an action may be dismissed by the [Petitioner] without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer" Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, the "Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules."

At this time, Respondent has not filed an answer to the petition for writ of habeas corpus. Furthermore, the Court finds that Respondent will not suffer prejudice by a dismissal of this action.

Accordingly, IT IS ORDERED that:

1. Petitioner's motion to withdraw his petition is GRANTED;
2. Respondent's motion to dismiss is DENIED as moot;
3. This action is DISMISSED;
4. The Clerk of the Court is DIRECTED to close this action; and
5. Petitioner is forewarned that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) imposes a statute of limitations of one year in which a petitioner must file a federal petition for writ of habeas corpus. See 28 U.S.C. § 2244(d)(1).

IT IS SO ORDERED.

Dated: November 9, 2005
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/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE